IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 24TH MAY 2007 / 3RD JYAISHTA 1929

Crl.MC.No. 1392 of 2007()

C.R.NO. 54/06 OF RANNY EXCISE RANGE.

PETITIONER: 1ST ACCUSED.

MOHAN DAS, S/O. LATE DAMAODRAN,
KALATHIL, MARAMON, KOZHENCHERRY, PATHANAMTHITTA.

BY ADV. SRI.V.PHILIP MATHEW

RESPONDENTS: COMPLAINANT.

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1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. EXCISE INSPECTOR, RANNY RANGE,
PATHANAMTHITTA.

BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 24/05/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 1392 of 2007

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Dated this the 24th day of May, 2007

O R D E R

The petitioner is the first accused in a prosecution under the provisions of the Kerala Abkari Act. The crux of the allegation is that spirit was found to be in the illegal possession of the petitioner, who runs a toddy shop. A crime has been registered. Investigation is in progress. The petitioner has come to this Court at this stage with a prayer that powers under Section 482 Cr.P.C. may be invoked to quash all further proceedings in pursuance of the alleged recovery effected.

2. What is the reason? The learned counsel for the petitioner submits that the allegation that four plastic bags containing spirit were recovered from the premises in the possession of the toddy shop is patently incorrect. He relies on the recitals in the relevant seizure mahazar, copy of which is produced as Annex.III. He contends that there is nothing to assume that the contraband liquor was found to be present in the premises of the toddy shop.

3. Secondly the learned counsel for the petitioner contends that Section 31 of the Kerala Abkari Act has not been observed in the conduct of search and that is sufficient reason to discard the evidence that is sought to be relied on by the prosecution.

4. I am afraid both contentions cannot be accepted at this stage to justify premature termination of the proceedings initiated against the petitioner. I must alertly remind myself of the nature of the jurisdiction that I am called upon to exercise. The jurisdiction under Section 482 Cr.P.C. is an extra ordinary inherent jurisdiction. It has to be invoked sparingly and in exceptional cases, that too in aid of justice only. The mere possibility of discharge/acquittal at later stages of trial is by itself no reason to justify invocation of the powers under Section 482 Cr.P.C.

5. I shall carefully avoid any expression of opinion on merits or detailed discussion of the allegations or the relevant facts, lest it might adversely affect the interests of the parties. Suffice it to say that I have carefully gone though the allegations in Annex.III. At the moment and with the available inputs, it appears to be impossible for the court to sail to the conclusion that the recovery was effected from a place which was different and separate from the premises of the toddy shop. It is by now

trite that the mere fact that the search has been conducted infringing the provisions of the Statute is no reason to discard the result or outcome of such search. In this view of the matter, the alleged non-compliance with the provisions of Section 31 of the Act cannot also help the petitioner. Reliance placed on the decision in **Subhayya** v. **State of Karnataka** (AIR 1979 SC 711) cannot also be of any help to the petitioner, as that was a case where the validity of the conviction was being considered by the learned Judges and the learned Judges took the view that the alleged search and seizure in that case cannot be accepted on the ground that there was unsatisfactory infraction of the relevant provisions of the Statute.

6. The learned counsel for the petitioner submits that the petitioner has not been arrested so far. He is willing to surrender before the learned Magistrate or the Investigating Officer. He can, of course, do the same and I have no reason to assume that the learned Magistrate would not consider his application for bail on merits, in accordance with law and expeditiously. Every court must do the same. Sufficient general directions have already been issued. No special or specific direction appears to be necessary.

7. This Crl.M.C. is in these circumstances dismissed. I may hasten to observe that I have not intended to express any opinion on merits on the

facts involved and the questions must be considered by the courts on the basis of the evidence to be adduced in the case.

(R. BASANT)
Judge

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